

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JOEL VARGAS, an individual

Plaintiff,

-against-

ZUMIEZ, INC. URBAN OUTFITTERS, INC.
and AUSTIN POST, d/b/a POSTY CO.,

Defendants.

Case No. 19 Civ. 2056 (AT) (JLC)

ANSWER

Defendant, Zumiez, Inc. ("Zumiez") in answer to the Complaint filed by Plaintiff, Joel Vargas, states as follows:

1. Denies paragraph 1 of the Complaint.
2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2 of the Complaint and refers all questions of law to the court.
3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3 of the Complaint and refers all questions of law to the court.
4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4 of the Complaint and refers all questions of law to the court.
5. Denies knowledge or information as to the truth of the allegations in paragraph 5 of the Complaint.
6. Admits paragraph 6 of the Complaint.
7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7 of the Complaint.
8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8 of the Complaint.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 9 of the Complaint.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10 of the Complaint.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11 of the Complaint.

12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12 of the Complaint.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13 of the Complaint.

14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 14 of the Complaint.

15. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 15 of the Complaint and refers all questions of law to the court.

16. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 16 of the Complaint and refers all questions of law to the court.

17. Admits paragraph 17 of the Complaint.

18. Admits that Zumiez is offering for sale apparel including t-shirts bearing the word "Stoney" as shown in Exhibit B of the Complaint but denies the remaining allegations in paragraph 18 of the Complaint.

19. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 19 of the Complaint and refers all questions of law to the court.

20. Denies the allegations in paragraph 20.

21. Denies the allegations in paragraph 21.

22. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 22.

23. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 23.

24. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 24 of the Complaint and refers all questions of law to the court.

25. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 25 of the Complaint and refers all questions of law to the court.

26. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 26 of the Complaint and refers all questions of law to the court.

27. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 27.

28. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 28 of the Complaint and refers all questions of law to the court.

29. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 29 of the Complaint and refers all questions of law to the court.

30. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 30 of the Complaint and refers all questions of law to the court.

31. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 31 of the Complaint and refers all questions of law to the court.

**AS AND FOR A RESPONSE TO
PLAINTIFF'S FIRST CAUSE OF ACTION
FOR TRADEMARK INFRINGEMENT**

32. Responds to paragraph 32 of the Complaint by repeating and realleging each and every response to the allegations in paragraphs "1" through "31".

33. Denies the allegations in paragraph 33 of the Complaint.

**AS AND FOR A RESPONSE TO
PLAINTIFF'S SECOND CAUSE OF ACTION
FOR UNFAIR COMPETITION & FALSE DESIGNATION OF ORIGIN**

34. Responds to paragraph 34 of the Complaint by repeating and realleging each and every response to the allegations in paragraphs "1" through "33".

35. Denies the allegations in paragraph 35 of the Complaint.

36. Denies the allegations in paragraph 36 of the Complaint.

37. Denies the allegations in paragraph 37 of the Complaint.

38. Denies the allegations in paragraph 38 of the Complaint.

**AS AND FOR A RESPONSE TO
PLAINTIFF'S THIRD CAUSE OF ACTION
FOR COMMON LAW TRADEMARK INFRINGEMENT & UNFAIR COMPETITION**

39. Responds to paragraph 39 of the Complaint by repeating and realleging each and every response to the allegations in paragraphs "1" through "38".

40. Denies the allegations in paragraph 40 of the Complaint.

41. Denies the allegations in paragraph 41 of the Complaint.

42. Denies the allegations in paragraph 42 of the Complaint.

43. Denies the allegations in paragraph 43 of the Complaint.

**AS AND FOR A RESPONSE TO
PLAINTIFF'S FOURTH CAUSE OF ACTION
FOR UNJUST ENRICHMENT**

44. Responds to paragraph 44 of the Complaint by repeating and realleging each and every response to the allegations in paragraph "1" through "43".

45. Denies the allegations in paragraph 45 of the Complaint.

46. Denies the allegations in paragraph 46 of the Complaint.

FIRST AFFIRMATIVE DEFENSE

47. Plaintiff has failed to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

48. Plaintiff's claims are barred in whole or in part by the doctrines of laches and estoppel.

THIRD AFFIRMATIVE DEFENSE

49. Plaintiff's claims are barred in whole or in part by the doctrine of unclean hands.

FOURTH AFFIRMATIVE DEFENSE


50. Plaintiff's claims fail due to lack of subject matter jurisdiction.

As this lawsuit is at its inception, Defendant Zumiez, Inc. reserves the right to assert additional defenses and counterclaims as warranted by the facts revealed in discovery.

Dated: New York, New York
May 16, 2019

GARVEY SCHUBERT BARER, P.C.

By: _____


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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 16th day of May 2019, a copy of the foregoing Defendant Zumiez, Inc.'s Answer to Plaintiff's Complaint was filed electronically using the Court's electronic filing system. Notice of this filing will be sent electronically to all parties of record by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing.

Parties may access this filing through the Court's CM/ECF System. A copy of the foregoing was also sent electronically and by first class mail to:

Joel Vargas, *Plaintiff*
207 West 102nd Street - Apt. 3D
New York, NY 10024
stoneydrip@gmail.com

/s/ Kara Steger

Kara Steger